

# Self governing schools and legal implications: Theory and Practice

*Geoffrey W. G. Leane*

*University of Canterbury School of Law*

## **Metanarrative: The institutional background**

### *Introduction*

The New Zealand economy has been through a radical restructuring, commencing in 1984 and following a so-called 'neoliberal' philosophy of economic rationalism. A market-based model has been imposed on most public sector activities, including the provision of education, together with a new ethos of managerialism. As a corollary, earlier liberal notions of a minimalist state are embraced. The fear is that under so-called public choice theory individuals (including bureaucrats and politicians) will act in their own individual self-interest rather than in some idealised notion of the public good<sup>1</sup>. The dysfunctional result, it is said, will be 'provider capture' by those individuals and a consequent growth in government and, impliedly, a diminution in efficient resource allocation.

The genesis for the philosophy of 'self governing' schools lies in two 1988 policy documents – 'Tomorrow's Schools'<sup>2</sup> and the Picot Report<sup>3</sup>. Formal legislative implementation of the program came with the *Education Act 1989*. Old institutional structures in education were to be replaced by 'systems of governance based upon rational principles of responsibility and accountability which would be linked transparently to policy decisions and action'<sup>4</sup>. The general political background was characterized by an embrace of free market economics and minimal state intervention, notwithstanding that the government of the day was Labour. Education was taken to be another commodity in the marketplace. The reforms have been characterized as 'arguably the most thorough and dramatic transformation of a state system of compulsory education ever undertaken by an industrialised country'<sup>5</sup>.

---

<sup>1</sup> See, for example, J.Codd 'Educational Reform, Accountability and the Culture of Distrust' (1999) 34 New Zealand Journal of Educational Studies' #1 45 at 46-48.

<sup>2</sup> 'Tomorrow's Schools: The Reform of Education Administration in New Zealand' (D.Lange, Minister of Education, August 1988).

<sup>3</sup> 'Administering for Excellence: Effective Administration in Education' (Report of the Taskforce to Review Education Administration' April 1988) (the 'Picot Report').

<sup>4</sup> D.McKenzie 'The Clouded Trail: Ten Years of Public Education Post-Picot' (1999) 34 New Zealand Journal of Educational Studies' #1 at 8.

<sup>5</sup> M.Alexander 'School reforms cause racial split' (Christchurch) Star Times (May 21, 2000) at A6 (quoting H.Ladd, E.Fiske *When Schools Compete: A Cautionary Tale* (Brookings Institution Press, 2000)).

The image of the old education framework was one of rigidity, with a centralised, highly bureaucratised Department of Education on the one hand and powerful, self-interested teacher unions on the other. Resources were said to be expended inefficiently and motivation tended to lie in teacher self-interest<sup>6</sup>.

The new image would be characterised by flexible, localised institutions newly empowered and responsive to local community. Teacher self-interest would be re-directed by market forces toward meeting the needs of its constituent community and thereby to the social good generally. The new institutional framework would encourage entrepreneurship and innovation in place of the old rigidity and bureaucracy. Some possible channels for the newly entrepreneurial school included charging 'voluntary' fees, image shaping, nurturing corporate relationships, attracting foreign fee-paying students, curriculum innovation (within the national guidelines), and so on<sup>7</sup>.

A centrepiece of the new philosophy was a transfer of substantial powers of governance and management of individual schools from the centralised Ministry of Education to locally elected School Boards of Trustees. The trustees would be the medium through which this new responsiveness to the education marketplace would be realised. The new institutional framework imposed complex, quasi-contractual roles and responsibilities on school boards<sup>8</sup> and a similarly complex relationship with Principals. Accountable Boards implied control over resources, and so a corollary of the new regime was the granting of (formula based) 'bulk funding' to boards along with discretion as to its allocation. Salaries were of course the major category of expenditure and within a given total, and within given maximum and minimum staffing ratios, boards would have discretion as to numbers of teachers and the steps on the national salary scale at which they would be employed. By May 1998 only 10% of boards had exercised the bulk funding option, so the government introduced some \$222 million in financial incentives to attract new boards. The mechanism involved funding teacher salaries at the top of the range irrespective of the individual schools' actual salary profile – those with less senior staff would be favoured. The policies were resolutely opposed by national teacher associations<sup>9</sup>. Interestingly, the original market model for education scheme was introduced by a Labour government, continued by a National (conservative) government, including the financial incentives to join the

---

<sup>6</sup> See, for example, S. Robertson 'Strip Away the Bark. Expose the Heartwood. Get the the Heart of the Matter: Re/regulating Teachers' Labour in New Zealand' (1999) 34 New Zealand Journal of Educational Studies #1 121 at 124.

<sup>7</sup> Supra, note 6 at 126.

<sup>8</sup> See, for example, Note 4 at 10: 'BOT's were required to learn rapidly not only how to manage school plant but also to hire staff, act as a good employer, and be accountable to their electorates and government authority for the expenditure of public money and the professional work in their schools'.

<sup>9</sup> See, for example, supran note 4 at 11 – teacher associations objected on grounds of adhering to national career and salary structures, equity between schools, and the dangers of boards opting to buy 'cheap' staff. See also supra note 6 at 126, noting also claims of risk of declining school funding, larger class sizes, competition between teachers and a diminution in collegiality.

bulk funding scheme, whilst the new and current Labour government has moved to roll back bulk funding<sup>10</sup>. Some one third of schools had eventually opted in to the bulk funding scheme<sup>11</sup>.

The role of the Ministry of Education was to be narrowed to one of providing policy advice to government, national curriculum objectives, monitoring current policy and mediating rule-based resource allocation. Presumably there were bureaucratic cost savings to be realised – reduced transaction costs – and impliedly an ability of government to distance itself from controversy in the educational marketplace. An important link between local boards and the Ministry would be the mandatory inclusion in Board-authored school charters of benchmark National Educational Guidelines (NEG's) and National Administration Guidelines (NAG's). They would form a core program of outputs against which schools as providers could be evaluated by the newly created Education Review Office (ERO), which replaced the old school inspectors<sup>12</sup>. Its reports were to be made public and a bad one would serve as a compliance 'whip' in the race of providers, since poor performers would face declining enrolments in the competitive marketplace and be allowed to fall by the wayside. Of course ERO's audit target was both teachers and boards, and its audience both the Ministry of Education and the local community – the former to ensure compliance with educational benchmarks and the latter to unleash the market forces which would be the ultimate regulator. In the opinion of some a culture of trust (particularly in teachers but also in the public service culture of educational bureaucracy) is thus replaced by a culture of surveillance<sup>13</sup>.

The new framework valorised 'managerialism' and 'markets', focusing on measurable 'outcomes' (rather than resource inputs) and audits of 'providers', as opposed to (say) a more freewheeling acknowledgement of teachers' claims to expertise, innovation and qualitative pedagogy – in short, their professionalism. The educational 'product' is the child's educational 'entitlement', and the audit focuses on measurable managerial records of 'good practice' (such as the national curriculum, adherence to the NEG's and NAG's, formal systems and records such as attendance, marks, standard practices, teaching schedules, etc.). In short, a notion of 'good practice' constructed on managerialism<sup>14</sup> and its pseudo-scientific

---

<sup>10</sup> The Press, April 6 2000 at 6 (Education Amendment Bill introduced April 4, 2000) – the newspaper quotes Opposition education spokesperson Nick Smith as stating that 'about 890 of New Zealand's 2700 schools chose to be bulk-funded'.

<sup>11</sup> Ibid. See also supra note 6 at footnote 3 re early statistics – originally only 10% of schools opted in, and after 9 months the number had grown to 17%.

<sup>12</sup> Note that McKenzie (supra note 4 at 14) claims that ERO in fact bears an 'uncanny resemblance' to the old and generally discredited school inspector system, and (at 15) notes disapprovingly its tendency to privilege criteria merely on grounds of measurability rather than intrinsic worth. This latter is a standard criticism of managerialism generally.

<sup>13</sup> See, for example, supra note 1 at 49.

<sup>14</sup> 'Managerialism' broadly connotes the attempt to apply pseudo-scientific principles, using quantitative measures, to achieve greater (economic) efficiency and effectiveness in attaining predefined outcomes (see for example supra

aura. It is assumed, or at least asserted, that this shift is an appropriate evolution from the previously social / cultural practices of education.

Note that the professional context for teachers – including matters of discipline, classification, training and working hours – now lay in the hands of the new managers, the Board of Trustees<sup>15</sup>. More importantly, the new institutional arrangements arguably suggested a ‘low trust’ view of teachers themselves, of their status as ‘professionals’ involved in a complex and subtle activity, as opposed to the old model’s implied ‘high trust’ / professional characterisation<sup>16</sup>. Predictably, the potential for opportunism based on this managerial model then replaces one grounded in professionalism and the moral agency of the teacher – that is to say, teachers quickly learn the rules of the new game and shape their records and processes to it<sup>17</sup>, arguably at the expense of more subtle qualities (such as commitment, loyalty, sense of public duty, collegiality) that imbued the professional model<sup>18</sup>. Obedience and conformity to the new managerial values and processes become sufficient in themselves<sup>19</sup> and no further professional or moral responsibility is required. Accountability is now a formal, externally imposed thing reflecting low trust in the professional teacher. Note, however, that there are arguably important macro-economic costs to the (claimed) erosion of trust<sup>20</sup>, education being but a sub-set of those costs.

Note that Boards, too, will learn the rules of the new game and in many cases confine themselves to its narrow parameters in the hope of a ‘good’ ERO report. They will be guided by the school principal who in turn must master and practice the new values and processes. Thus does the tail start to wag the dog. That school boards would be ill-equipped to manage, or even be aware, of these fundamental changes would seem obvious. They too will be swept up in externally imposed values and processes at the macro level – for example, the requirements of NEG’s and NAG’s, the recurring presence of ERO – and at the micro level by principals themselves who must become the agents of change and who control the flows of managerial information to the board, and who will (according to the public choice theory that informs the new model) be motivated by their own self-interest.

---

note 1 at 47 – an early example is that of Taylorist industrial management systems evolving as a counterpart of Fordist mass production in early twentieth century America).

<sup>15</sup> See supra note 6 at 123.

<sup>16</sup> Supra, note 6 at 128-9. See also at 130: ‘Students are assumed to be mere empty vessels to be filled with the appropriate curriculum mixture, delivered via a particular pedagogy and assessed at regular intervals. Ethnicity, gender and class are viewed by ERO as excuses offered by teachers to protect their own self-interest’.

<sup>17</sup> For example the ‘manufacture of artefacts and ritualistic displays’ to impress the ERO observer (supra note 6 at 130). Efficiency / effectiveness is to be measured in terms of records and reports which meet the important criterion of efficiency not only being done but being seen to be done (see, for example, supra note 1 at 47).

<sup>18</sup> See, for example, supra note 1 at 51-2.

<sup>19</sup> Ibid.

<sup>20</sup> See, for example, supra note 1 at 50-51. The argument is that trust contributes to ‘social capital’ and that it is self-perpetuating, and conversely that distrust in turn breeds more distrust and becomes self-fulfilling. Importantly (citing F. Fukuyama *Trust: The Social Virtues and the Creation of Prosperity* (Hamish Hamilton, 1995) ‘social trust is critical to economic prosperity’ and the risk is that the New Zealand experiment with economic rationalism may ironically be eroding the very economic prosperity it seeks to invigorate.

Finally, in 1991 the newly elected National government extended the reforms by removing zoning requirements, thus enhancing at least the illusion of an educational market by introducing parental choice<sup>21</sup>. That it is an illusion is fairly obvious as the model takes no account of the socio-economic contexts of students and schools. High profile, high status and high scoring schools will clearly be popular choices but unable to accept all applicants. Choice will be exercised by the school / principal rather than parents and will tend to be self-perpetuating<sup>22</sup>. [RELATE THIS TO LATER -??- DISCUSSION OF ‘CHOICE’ VS. ‘EQUALITY’ AS PER OLSEN DISCUSSION PP. 67-8...note that he ‘wrong’ on this re equality moves aimed at level playing field s.t. have authentic ‘choice’ for Kantian liberalism/? ...ditto re Rawls stuff p.68 etc and notion of Rawlsian ‘equality’ actually about authentic ‘choice’ ?? ...p.69 re education as a primary good for Rawls and therefore essential for equality leading to authentic choice??]

In summary, then, the fear is of education being captured by a pseudo-scientific discourse of economics<sup>23</sup> and managerialism, at a cost yet to be ascertained but difficult to measure.

The ideological motivations for this new educational model seem to be varied but rarely explicit. At a macro-economic level one motivating factor was the international competitiveness of the New Zealand economy<sup>24</sup>, presumably both in terms of educational ‘outputs’ and of efficient resource allocation. The new framework would ideally produce a more efficient use of resources<sup>25</sup> as high performers are rewarded and poor performers flounder. There is more than a whiff of the ‘commodification’ of education here – for example in the language of education ‘providers’, student ‘consumers’<sup>26</sup>, consumer ‘preferences’, educational ‘outputs’ and ‘markets’ – though never made explicit, presumably for fear of offending any lingering sensibilities with respect to education as a process of learning, innovation, acculturation, knowledge for its own sake, nurturing of creativity and critical analysis, and whatever else goes on behind those closed classroom doors. There are also practical problems – for example, in urban areas

<sup>21</sup> In reality authentic choice was limited to certain parents, and in urban areas schools (and in particular the principals) were in fact doing the choosing (J.Boston ‘The unbalanced educational laboratory’ NZ Education Review, May 19 2000 at 11). The new Labour government has introduced legislation to reintroduce a system of geographical zoning.

<sup>22</sup> See, for example, M.Olsen ‘Education Policy, the cold war and the ‘liberal-communitarian debate’ (1998) 13 Journal of Education Policy 63 at 67.

<sup>23</sup> Note that similar fears have been expressed of the Law and Economics movement in legal jurisprudence – see, for example, M. Davies *asking the law question* (Law Book Company, 1994) at 128-141

<sup>24</sup> For example, a 1991 Ministry of Education statement that ‘national directions for schooling [are] essential if New Zealand is to achieve the standards which, as a small trading nation, it needs in order to prosper alongside other nations in the international market place’ (quoted in supra, note 4 at 15; see also supra note 6 at 122).

<sup>25</sup> The Picot Report (supra, note 3 at 9.7.1) estimates efficiency gains of ‘at least’ \$111m. p.a. versus additional costs of \$18m. p.a. (1987-88 \$NZ).

<sup>26</sup> Note that this fundamental question of the ‘consumer’ of education is unclear – is it the student, the parents of students, employers, the government or is it indeed society itself?

the abolition of school zones and the ability to attract foreign students render the definition of ‘community’ problematic even if it is taken to be the desired target audience or ‘consumer’.

Another strong ideological theme, again not explicit but fairly obvious, is that of community and democracy – the notion that the education of children ought to be responsive to the values, needs, aspirations and so on of local community. There are many theoretical problems here – for example, the contrary notion in liberal societies such as America that the individual (in this case the student) precedes and transcends community. Similarly if liberalism suggests, or better yet demands, an equal starting point for individuals in their pursuit of the good life then the ability of ‘better’ schools to, for example, levy voluntary fees and attract students will continue to promote a hierarchy of schools. Thus one version of liberalism<sup>27</sup> suggests that we need an *interventionist* state to distribute a reasonably equal entitlement to individuals in at least structuring a level playing field, for example through equal access to quality education. An activist state is actually a necessary pre-condition for authentic liberty. That version of course conflicts with present conceptions of a minimalist state. Whatever philosophical forces might be motivating the new model seem to be confused if not contradictory.

In summary the new regime is a combination of artificially induced market forces, state-sponsored regulation and monitoring and a ‘democratic’ model of community governance. In its legislative embodiment the law can be seen as sword in cutting down the old model and shaping the new, motivated by a new ideology, and to a lesser extent as a shield against perceptions (real or imagined) of opportunism and inefficiency.

Whether or not it has been a success is difficult to establish. There is some evidence that fears of negative effects have proven justified in terms of increased polarisation between ‘good’ and ‘bad’ schools and additional administrative workloads on staff, and further that there has not been any offsetting improvement in the quality of the education system<sup>28</sup>. In any event I offer my own experience at the ‘coal face’ as a different and perhaps useful perspective.

### **Micronarrative: A Personal Account**

---

<sup>27</sup> See, for example, M.Olssen ‘Restructuring New Zealand Education: Insights From the Work of Ruth Jonathan’ (1999) 34 New Zealand Journal of Educational Studies’ #1 54 at 58 – the term used here is ‘Ehtical’ or ‘Perfectionist’ Liberalism.

<sup>28</sup> Forthcoming study by H.Ladd, E.Fiske *When School’s Compete: A Cautionary Tale*, quoted in the NZ Education Review, May 19 2000 at 5 – the authors concluded generally that ‘combining self-governance with competition appeared to exacerbate the polarisation of enrolment patterns by racial and ethnic groups, created winners and losers amongst schools, and led to conflicts of interest between individual schools and the wider good of the education system’.

## *Introduction*

I put this personal experience forward in full awareness of the limitations of anecdotal accounts, but encouraged by postmodernists' encouragement of individual 'stories' which can illuminate broader themes.

It is important to emphasize that there is nothing extraordinary about the basic characteristics of this narrative. The school was located in a high decile socio-economic environment, staffed by a unexceptional group of teachers headed by a principal who was probably averagely competent and a school board comprising a reasonable cross section of the community and probably gifted with at least an average complement of common sense. The central question to be answered is whether or not this 'case study' supports the underlying assumption of the new order – namely that the important variable in educational outcomes is the way in which individual schools are managed and that local management will improve those outcomes.

## *The Board*

I was elected to a school board (which we can call 'Stone School') in 1998 and thence elected chairperson. The process itself is of passing interest – I was encouraged by the principal and two of the teachers to run for election, notwithstanding my own reservations. The motives of my promoters were quite different but in retrospect significant. The principal perceived me as a more 'friendly' trustee than those on the previous Board, and engineered my nomination to the chair. The teachers were concerned at the principal's management of the school and thought I would 'stand up to him.' As it turned out I probably disappointed all parties. A final factor was that there was expected to be a shortage of candidates and I felt a twinge of civic duty that persuaded me to run. In any event school 'politics' were clearly in motion even before the board election.

All but one of the elected Board members were new. Lack of continuity and experience were immediate problems. Not surprisingly the principal was to be our guide as he was effectively the sole repository of relevant knowledge and experience. One trustee, having narrowly missed election, was co-opted to fill a perceived gap in financial and accounting expertise. All but myself were parents of pupils at the school. There was some anecdotal history of the previous board not always 'getting along' with the principal. There was also some 'feeling' in the community that, to the extent that the school was less than it could be, the blame lay substantially with the principal himself. Not that he was extraordinarily incompetent but simply that he was not up to the expectations of the community. Of course it is impossible to separate out reasonably grounded suspicions from some inevitable low level current of dissatisfaction with an individual discharging a very difficult job to a diverse audience of parents, students, staff and trustees.

## *The Process*

That institutional innovations do not evolve precisely as expected is not a criticism, and ideally one starts on the new trajectory with the expectation of having to adapt and reshape roles as they reveal their strengths and weaknesses. But whatever the ideological framework for the new model, and however the new roles were conceptualized, in practice the roles and relationships were in my experience fraught with practical difficulties and limitations of experience, expertise and resources within the board.

A pattern of monthly meetings with an agenda largely engineered by the principal was quickly set. The subject matter – approval of reports, authorisation of school trips, approval of draft standard practices in anticipation of an ERO audit – were largely uncontroversial. If there was a fundamental shortcoming it was grounded in the complex, subtle and all-important relationship with the principal. This was a board almost totally lacking in professional educational expertise, both as to educational theory and the day to day practices and processes of running a school. The vacuum was unsurprisingly filled by the principal, who was thereby able to largely ‘control’ the board with selectively presented information and self-serving responses which board members felt unable to challenge. That helplessness came from two sources, the first being most obviously the board’s limited knowledge base. The second constraint was I think the more important – the board was entirely reliant on the principal for the smooth running of the school, and extremely reluctant to confront the principal in any way that might prove divisive. A related constraint was the board’s ultimate inability to discipline or dismiss the principal, who had elected to continue his permanent status rather than move to (a more remunerative) contract status. There was no suggestion of sufficient incompetence to warrant any kind of dismissal proceedings, especially given the risks<sup>29</sup>, so in effect he had tenure. Given that we had to work together for the foreseeable future there was a strong incentive to keep the relationship harmonious, at almost any cost, and we did.

A telling example was the appointment of a part-time deputy principal which became possible as the school’s relatively small enrolment briefly reached the necessary threshold for the appointment. The principal had a handpicked candidate from the existing staff, asserted that this was the only possible candidate, and put the person forward for approval by the board. I personally had reservations about the individual as a result of informal feedback from teachers. But none of the board members had any formal reason to object, and no informed grounds for questioning the process. Nor did we even interview the candidate on,

---

<sup>29</sup> See, for example, *Hobday v Timaru Girls High School Board of Trustees* (Employment Court, Christchurch E16/94) wherein a board dismissal of a principal was overturned and the reinstated principal awarded \$62,000 and legal costs of \$181,000.



for example, his views on the school charter, his vision for the school, his practices for meeting the NEG's, and so on. I was reluctant to challenge the appointment when it was so clearly the principal's wish, and similarly did not wish to undermine an apparent consensus among other trustees. But most importantly I believe we were all motivated by the desire to keep the relationship with the principal amicable. The result was the permanent appointment of a deputy principal whom I had some grounds for believing might be unsuitable, via a process I wasn't at all sure had integrity. I would guess that the process, if not the outcome, would have been different under the old model.

The respective roles of board and principal – theoretically governance and management respectively – were poorly understood<sup>30</sup>. In a very real sense the board was 'sucked into' largely rubberstamping minor matters of management and the principal was able to assert substantial control over matters of governance, on the rare occasions they might arise. The faceless bureaucrats of the previous Department of Education were now replaced by the all too familiar faces of local community, and the potential for 'small' politics unleashed in the local community.

On the other hand there was an exception to the dominance of the principal in the bulk funding debate. Bulk funding had been merely a background noise which I had picked up from chance newspaper articles. It will be recalled that the bulk funding of salaries was introduced on a voluntary basis and that only a minority of schools had opted for it. The government introduced financial incentives totalling some \$222 million to encourage schools to join, sometimes for considerable financial gain. When I raised the question with the Board it was clear that there was very little understanding of the issues and considerable resistance from the principal and, it was said, staff (echoing union hostility). I insisted that the issue be debated and at least accepted or rejected on informed grounds. I invited a spokesperson to make a presentation, and there then evolved a fair measure of support not only on the board but even the principal, who saw the potential for flexibility in managing staffing at the school. I left the Board before the issue was finally resolved, but it came to represent to me what I took to be a paradigmatic example of the leadership on governance which the board was supposed to deliver but which we had been sadly lacking. It was a question of striking a balance between the board asserting itself in the face of a dominant principal and at the same time protecting an harmonious relationship with the CEO upon whom it was so heavily reliant. However, it was a balance rarely struck in my experience, and

---

<sup>30</sup>See, for example, New Zealand Law Society Seminar 'Education Law' (October 1999) at 17-20. In fact the board's powers – on a plain reading of the *Education Act 1989* – are very broad and include management. Section 75 stipulates that (subject to other enactments and the general law of New Zealand) '...a school board has *complete discretion to control the management of the school as it thinks fit*' [emphasis added]. Note as well that the board is the principal's employer and the principal must therefore obey its lawful and reasonable directions.

the reality was a weak board and the deliverance by default of an inappropriate measure of power to the principal.

The ideology and institutional theory behind the new educational model were never raised in Stone School. We on the board simply commenced in almost total ignorance of what our roles and functions were supposed to be – rather we took our cue from the principal and rarely forged a course of our own (with the above exception of bulk funding). Clearly some kind of training was required, as our responsibilities included such areas as employment, enrolment, privacy, health and safety, curriculum and finance – clearly we were competent in few, if any. The only avenue available lay in seminars and workshops conducted by the School Trustees Association. They were voluntary and on the whole poorly attended though (in my limited experience) competently run. In the board's first year only one other trustee and myself attended an evening workshop. In the course of the workshop it became embarrassingly clear at one point that we were not even aware of the NAG's and NEG's, fundamental as they were to the new model. However, I soon understood at least some of the basic rules and familiarised myself with the NAG's and NEG's for the later introductory meeting for the school's ERO audit. Thus was I able to give at least the illusion to the ERO 'examiners' that the board was more or less aware of the fundamentals.

Although the board were the employer of teaching staff we had no direct communication – only secondhand input through the principal and staff representative. Thus we had no insight into how the new model affected teaching staff – for example, the discussion above suggests that this is a 'low trust' model which diminishes values of professionalism and trust in favour of managerialism constant monitoring. And of course that is the point – in the core business of teaching and learning the board was radically ill-equipped, ill-informed and irrelevant.

A final reservation relates to the involvement of parents and community. There was almost none. At best we might insert a note in the school newsletter that the draft school charter was available for input but we held no public meetings or organised any other kind of formal input. Community participation was just an empty phrase.

## **Summary**

If the experience of Stone School can be applied more broadly then the implication may be that we will be burdened with decisions made inconsistently and often irrationally across schools depending on the machinations of local small politics, particularly in the principal-board relationship. With under-qualified, inexperienced and under-trained boards motivated primarily by fear of making (especially ERO) mistakes and heavily reliant on principals there is a high risk of

‘board capture’ by principals. That is the reverse of the intent of the legislation. Although the legal hazards are fairly benign – for example, responsibility for delivering on the school charter, with quality assurance provided by ERO<sup>31</sup> – there are some risks<sup>32</sup>.

Public choice theory suggests that those working in institutions and organisations ‘will necessarily and always serve their own interests (ahead, for example, of those of their students)<sup>33</sup>’ – in other words they will act not in the public interest but out of self-interest. Indeed this was implicit in the new program, motivated as it was by mistrust of both the old Department of Education bureaucracy and the teachers’ unions. Hence the need for ERO. But the same theory must motivate principals in relations with boards of trustees, and that was my experience. Of course the same logic applies to the board as well – they presumably share with the principal an urge for power, though more diffused and less focused, both because they are a collective and because it is a part-time activity for them and not a core business. The old model of ‘provider capture’<sup>34</sup> – referring to capture by bureaucracy and teacher unions – is now replaced in Stone School by board capture by the principal. A similar danger must exist for provider capture by a determined, issue-oriented school board. Thus, the new model simply moves the locus of struggle for power and assertion of self-interest to the local level where there is presumably a greater likelihood of aberrant outcomes as compared to a centralised system, whatever its faults. In any event the new model is vulnerable to opportunism which is not only morally hazardous<sup>35</sup> but also quite likely resource inefficient, if only because it is driven by non-professionals.

My personal doubts about the new model, in light of both my experience on a Board and what ‘common sense’ surely suggests, can be narrowed down to one simple proposition – that it is naïve to assume that a Board of lay persons will somehow bring to their task a sufficient modicum of judgement, wisdom and professional expertise to govern and manage the complex task of education delivery optimally, or even better than the previous centralised model. From my brief review of the literature there has been little analysis of the nature of boards of trustees – their backgrounds, values, motivations, modus operandi. Rather it is just assumed that they will be adequately equipped, properly motivated and competent,

---

<sup>31</sup> For example, the NEG’s, which are automatically incorporated into binding school charters, articulate a guiding principle that ‘the board of trustees accepts that all students in any school under its control are given an education which enhances their learning, builds on their needs and respects their dignity ... this education shall challenge them to achieve personal standards of excellence and to reach their full potential ...’. Surely such exhortations, admirable though they may be, are too broad and unmeasurable to carry with them any meaningful legal liability (or alternatively that they are simply too onerous to discharge). Note also that given reasonable opportunity the courts will be inclined to defer to board decisions – see, for example, *Maddever v Umawera District School* [1993] 2 NZLR 478 at 506-7.

<sup>32</sup> Particularly in the area of unjust dismissal – *supra*, note 28.

<sup>33</sup> P.Fitzsimons et al ‘Economics and the Educational Policy Process in New Zealand’ (1999) 34 *New Zealand Journal of Educational Studies* #1 35 at 42.

<sup>34</sup> *Supra*, note 6 at 128

<sup>35</sup> *Ibid*

notwithstanding that there are essentially no qualifications stipulated and no training required. It is essentially Big Politics writ small but with no expert executive (other than self-interested principals) to support elected representatives. One wonders.